nary scope of police jurisdiction. Beyond the regulation of public health, order and morals it is usually unwilling to go.[26]

There remains but to present the other side of the picture. Some courts asseverate that two convictions can be supported only when there are distinguishing elements in the offense as denounced by both city ordinance and State law.[27] It is submitted that this position neglects the salutary doctrine that an offense against the State, though criminal, becomes an aggravated and pragmatic nuisance when committed in a city. Other courts hold that double jeopardy is an insurmountable objection, and that the court, municipal or State, which first acquires jurisdiction of the case must be the sole tribunal of its prosecution.[28] This view fails to account for the importance of the city's police power as a cumulative agent of the State's protection, and it is suggested that such omission opens this doctrine to objection.

In conclusion, the true rule on the subject appears to be this: the offense whose actor is sought to be twice exposed to punishment must be legally divisible by two. To this end the State legislature must have expressly bestowed upon the municipal corporation the gift of local police regulation,[29]—a gift dependent upon no implication of even an express but general power. The effect of such legislation is to present two jurisdictions and two modes of punishment, that of the city civil, and that of the State criminal, thus giving to the offense a double nature which calls upon itself the vengeance of two distinct laws. Where this legal arithmetic can be compassed, both city and State may prosecute the offender; where it cannot, he is protected by the Constitution.

W. C. B.

THE RIGHT OF THE MAJORITY OF SHAREHOLDERS OF A CORPORATION TO SELL ALL THE CORPORATE ASSETS AGAINST THE WILL OF THE MINORITY.—There has been a great deal of litigation in the courts of this country over the question of whether or not a majority of the shareholders of a solvent going corporation can sell all the corporate assets over the dissent of a minority shareholder. Naturally two views have arisen: viz, the "strict" view which does not permit such a sale but allows the objecting minority to compel the assets to be retained by the corporation, and the "liberal" view which allows such a sale in the absence of fraud and oppression upon the part of the majority.[1] The question is now sometimes regulated by statute, but the remainder

[26] Commonwealth *v.* Turner, 1 Cush. (Mass.) 493; Howe *v.* Treasurer of Plainfield, 37 N. J. L. 145.

[27] Taylor *v.* City of Landersville, 118 Ga. 63, 44 S. E. 845.

[28] State *v.* Cowan, 29 Mo. 330; State *v.* Thornton, 37 Mo. 360; Lynch *v.* Com. (Ky.), 35 S. W. 264.

[29] Kassell *v.* Mayor of Savannah, 109 Ga. 491, 35 S. E. 147.

[1] 20 COLUMBIA LAW REV. 344.

of this note will be taken up in considering the two views as found at common law.

The "strict" doctrine simply does not permit "a majority of the stockholders of a solvent going corporation to sell its entire assets and property over the objection of a minority stockholder".[2] This is the view held perhaps by the majority of the text-writers on Corporations and of the decided cases. The leading case in this country is that of *Abbott* v. *American Hard Rubber Co., supra.* Mr. Cook in his work on Corporations [3] says that the law has been settled in America since the time of this case. And yet in this case the directors of the corporation sold the property in question without having been authorized to do so by the majority of the stockholders at any meeting. It is universally admitted that such an act is *ultra vires* the powers of the directors, and yet, it might easily be within the powers of the majority of the stockholders. The proposition for which the case is so often cited: viz, that a majority of the stockholders could not make such a sale, is a mere *dictum* found in the opinion. The other leading case supporting this doctrine is that of *Kean* v. *Johnson, supra.* However, this case involved the sale of the property of a quasi-public corporation, a railroad, and the rules affecting this type of corporation and the ordinary business corporation are widely different. Moreover, this case has been strongly criticised by a later New Jersey case.[4]

The better reasoned cases upholding this view usually give one or more of the following reasons for so holding: viz, first, that the sale of all the corporate assets brings about a practical dissolution of the corporation and that at common law dissolution could only be brought about by the unanimous consent of the stockholders;[5] second, that such a sale is *ultra vires* and that consequently any stockholder may interfere;[6] and third, that such a sale defeats the corporate purposes and that a majority cannot control corporate powers for such ends.[7]

The cases that take the "liberal" view are directly in conflict with those cited above, and they hold that a majority can effect

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[2] Smith *v.* Stone, 21 Wyo. 62, 128 Pac. 612; Abbott *v.* American Hard Rubber Co., 33 Barb. (N. Y.) 578; Kean *v.* Johnson, 9 N. J. Eq. 401; Tillis *v.* Brown, 154 Ala. 403, 45 So. 589; Byrne *v.* Schuyler Electric Mfg. Co., 65 Conn. 336, 31 Atl. 833, 28 L. R. A. 304; 3 COOK, CORPORATIONS, 7th. ed., § 670; 1 BEACH, PRIVATE CORPORATIONS, § 357.

[3] 3 COOK, CORPORATIONS, 7th. ed., § 670.

[4] Black *v.* Delaware Canal Co., 22 N. J. Eq. 130. See also 30 HARV. LAW REV. 355.

[5] This is the argument given in support of the *dictum* in Abbott *v.* American Hard Rubber Co., *supra.* See also 1 BEACH, PRIVATE CORPORATIONS, § 70, for doctrine and authorities that dissolution can be only brought by unanimous consent.

[6] Byrne *v.* Schuyler Electric Mfg. Co., *supra.*

[7] Tillis *v.* Brown, *supra;* Smith *v.* Stone, *supra.* This is the reason cited in 14 CORPUS JURIS, § 1323, note, as the real reason for the doctrine.

such a sale over the objection of a minority.[8] In the language of Justice Bigelow of the Massachusetts Court, "We entertain no doubt of the right of a corporation, established solely for trading and manufacturing purposes, by a vote of the majority of their stockholders, to wind up their affairs and close their business, if in the exercise of a sound discretion they deem it expedient so to do".[9] The cases holding this view, although perhaps not the weight of authority, show the decided trend of the more modern and recent cases. The reasons on which these cases are based can best be shown by answering or discussing the three views set forth above.

Those cases not allowing the majority to sell the corporate assets on the ground that this is a practical dissolution of the corporation fail to note the vital distinction between dissolution and winding up the corporate business. In the first instance, the corporate entity is extinguished and the corporation dies; while in the second, the corporation continues to exist and the sale of all the corporate property does not affect the rights of the corporation as such. The corporation continues to live and is legally capable of doing business. The practical results may be analogous but the legal situation is very different, and different rules should apply. Thus, in the absence of statute, it is universally admitted that there must be unanimous consent to bring about a dissolution, while the better reasoned cases allow a majority to wind up the business of the corporation.[10] In regard to the latter view, the validity of the sale by the majority depends upon their exercising good faith and not violating the fiduciary (quasi-fiduciary, at least) relation that exists between the majority and the minority in regard to the corporate assets.[11]

The objection that the act of the majority is *ultra vires* is really begging the question, and the result is assumed in the reason given for the result. But even then the objection could not have any possible weight unless the minority objected and brought suit before the sale was consummated for "if an *ultra vires* contract has been fully executed on both sides, the rule prevails everywhere that neither party can maintain an action at law or a suit in equity to recover what he or it has parted with".[12]

The third objection—that such a sale defeats corporate purposes—involves a consideration of what is the real purpose of a

[8] 5 THOMPSON, CORPORATIONS, § 6685; Treadwell *v.* Salisbury Co., 7 Gray (Mass.) 393, 66 Am. Dec. 490; Bowditch *v.* Jackson, 76 N. H. 351, 82 Atl. 1014, Ann. Cas. 1913A 366; Cohen *v.* Big Stone Gap Iron Co., 111 Va. 468, 69 S. E. 359; Chicago Hansom Cab Co. *v.* Yerkes, 141 Ill. 320, 30 N. E. 667, 33 Am. St. Rep. 315; Ervin *v.* Oregon R. & Nav. Co., 27 Fed. 625.

[9] Treadwell *v.* Salisbury Co., *supra.*

[10] 4 THOMPSON, CORPORATIONS, § 4443.

[11] Chicago Hansom Cab Co. *v.* Yerkes, *supra;* Ervin *v.* Oregon R. & Nav. Co., *supra.*

[12] CLARK, CORPORATIONS, 3rd. ed., 214, and authorities there cited.

private business corporation. It must be conceded that the real purpose of all business corporations is the making of money. This is shown by the fact that all the text-writers admit and all the cases hold that when the corporation is about to fail or become insolvent that the majority of the stockholders can sell all the corporate assets in order to make the loss as small as possible.[13] The reason on which this rule is based is that such authority was supposed to be contemplated and agreed to by all the shareholders since this is the action that sound business judgment would dictate. But "if the majority may sell to prevent greater losses, why may they not also sell to make greater gains? Bearing in mind that this is a purely business proposition, with no public rights or duties involved, there seems to be no substantial difference between the cases, as a matter of principle. In each case, the sale is made because it is of advantage to the stockholders." [14] And if an advantageous sale was made, the corporate purpose of making money would be furthered and not defeated by the act of the majority. An analogous holding is that the minority cannot compel the business to be carried on against the will of the majority.[15] And as said by Mr. Thompson in his book on Corporations,[16] "It is believed that no case can be found in which a court of equity has granted an injunction, at the suit of a minority stockholder against the majority, to prevent them from discontinuing the business of the corporation and winding up its affairs."

Thus, although there is an irreconcilable conflict of authority upon this question, it would seem on reason and principle that the majority should be allowed to make such a sale. No case has been found where the arguments advanced above have been considered and the court denied the right of the majority to act in this manner. "The question is one of future prospects [concerning the corporation]. Its decision requires the exercise of business judgment, sagacity, and power to forecast coming events. It is not an issue appropriate for trial and decision in courts, but rather one to be settled by the judgment of the men conducting the business in question. In a limited sense, the majority act as trustees for all the shareholders." [17] R. Y. B.

LANDLORD'S LIABILITY TO TENANT ON AN AGREEMENT TO KEEP SAFE THE LEASED PREMISES.—It has been long and well

[13] CLARK, CORPORATIONS, 3rd. ed., § 168; Tanner *v.* Lindell R. Co., 180 Mo. 1, 79 S. W. 155, 103 Am. St. Rep. 534, and note; Beidenkopf *v.* Des Moines Life Ins. Co., 160 Iowa 629, 142 N. W. 434, 46 L. R. A. (N. S.) 290; Phillips *v.* Providence Steam Engine Co., 21 R. I. 302, 43 Atl. 598, 45 L. R. A. 560.

[14] Bowditch *v.* Jackson, *supra.*

[15] Treadwell *v.* Salisbury Co., *supra.*

[16] 4 THOMPSON, CORPORATIONS, § 4443.

[17] Bowditch *v.* Jackson, *supra.*